S.B. Civil Revision Petition No.1234/2001

Sri Chand Vs. LR's of Mohan Lal

Date of Order :: 08-10-2004

HON'BLE MR. PRAKASH TATIA,J.

Mr. J.K. Bhaiya, for the petitioner.

Mr. A.L. Chopra, for the respondents.

Heard learned counsel for the parties.

The petitioner is aggrieved against the order dated 2.8.2001. According to learned counsel for the petitioner-plaintiffs, that on 31.10.1992 defendant Mohan Lal and Ors. submitted an application and informed that Sita Ram, one of the defendant died on 24.10.1990. On 27.10.1993, plaintiffs submitted an application stating therein that according to information received by the plaintiffs, Sita Ram though died but he was residing outside Bikaner. Sita Ram left no legal representatives as the plaintiffs after making enquiry, could not find them. It was further prayed that court may appoint any representative to represent the estate of Sita Ram. On 9.7.1996, court passed the order and held that Sita Ram left no legal representative and exempted plaintiffs from impleading any of the legal representative of Sita Ram under Order 22 Rule 4 A CPC.

After the order dated 9.7.1996, one Smt. Pushpa Devi claiming herself to be wife of deceased Sita Ram submitted an application on 9.2.2001 that she is legal representative of deceased Sita Ram and since Sita Ram's legal representatives have not been impleaded as party, therefore, suit has abated. On this application filed under Section 151 CPC, the trial court modified the order dated 9.7.1996 and deleted one line from the order whereby the trial Court held that defendant No.4 Sita Ram had no legal representatives.

According to learned counsel for the petitioner-plaintiffs, the court below has committed serious illegality in not declaring that the suit has not been abated.

Learned counsel for respondent Smt. Pushpa Devi who moved application before the trial Court submits that suit has not been abated and Smt. Pushpa Devi may be impleaded as a party by the trial court.

I perused the order dated 2.8.2001. It appears from the order dated 2.8.2001 itself that petitioners were given exemption to implead the legal representative of Sita Ram under Order 22 Rule 4A CPC, therefore, there was no question of abatement of the suit on the death of Sita Ram

in the light of the exemption granted by the trial Court. However, the trial Court itself despite noticing that, plaintiffs were given exemption from bringing on record the legal representatives of Sita Ram and, there was a prayer of the plaintiffs to appoint legal representative to represent the estate of Sita Ram, still the trial Court observed that there is no need to declare that suit has not been abated. Had the trial Court applied its mind to this question in the light of the order dated 9.7.1996 itself, the trial court would not have held so and could have observed that the suit has not abated and could have avoided this unnecessary revision petition. So far as, contention of learned counsel for Smt. Pushpa Devi, wife of deceased Sita Ram, who raised objection, that she has been impleaded as party in the suit by the impugned order, I do not find that such order has been passed by the court below. Since, Smt. Pushpa Devi being wife of Sita Ram voluntarily appeared before the trial Court and willing to be impleaded to represent the estate of Sita Ram, therefore, this Court deems it proper at this stage also under Order 1 Rule 10 CPC to implead Smt. Pushpa Devi wife of Sita Ram to be party defendant as legal representative of the deceased Sita Ram to avoid any further litigation and complications because of the fact that the plaintiffs themselves under assumption of wrong fact that Sita Ram left no legal representative requested that any representative may be appointed to represent the estate of

Sita Ram, therefore, when her own representative is willing to contest the suit and it has come to the notice of the court that Smt. Pushpa Devi is legal representative of Sita Ram, it will be just to implead the said Pushpa Devi as party in the suit.

In view of the above, it is held that suit has not been abated. Smt. Pushpa Devi wife of Sita Ram is impleaded as party under Order 1 Rule 10 CPC as well as under Order 22 Rule 4 CPC, so that arrary of the parties may be completed.

The revision petition is therefore, allowed as observed above. Smt. Pushpa Devi who is impleaded as party is also directed to appear in the trial Court on the date already fixed by the court.

[PRAKASH TATIA],J.

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